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are not numerous. Oregon has denied the power to its suburban roads. *Thompson, etc., Co. v. Simon*, 20 Ore. 60. In Illinois, Ohio, Pennsylvania, Wisconsin and, under certain circumstances, in Michigan, interurban roads have been held to be commercial roads and an increased servitude upon the highways. It is fair to presume that in those states, a statute similar to the Minnesota act would confer the right of eminent domain upon such lines. On the question of servitude see VI MICHIGAN LAW REVIEW, 84.

EVIDENCE—PRESUMPTION AS TO FOREIGN LAW.—Plaintiff brought suit in Alabama for damages for personal injury committed in Florida. At the trial the Florida law was not averred or proved. *Held*: The law of Alabama would be applied. (HARALSON and ANDERSON, JJ., dissent.—That Florida not being a common law state, an Alabama court could not presume that the Florida law was the same as the common law of Alabama; that the rule that the law of the forum would be applied on actions arising in other states, not having the common law, when the foreign law is not brought before the court, is a rule that will be applied in Alabama only to the enforcement of contracts.) *Watford v. Alabama & Florida Lumber Co.* (1907), — Ala. —, 44 So. Rep. 567.

There are two lines of holdings in regard to the application of the law of the forum in actions arising in other states having as the basis of their legal system the common law on failure of averment or proof of foreign law. One line holds that even the statutory law of the forum will be applied. The other line holds that only the common law will be applied; WIGMORE, EVIDENCE, § 2536 and cases therein cited. Alabama follows the latter line; *Louisville & N. R. Ry. Co. v. Williams*, 113 Ala. 402. In the principal case it is stated that the majority are of opinion that "The complaint is framed under the *common law*, which prevails in this state; and the question should, therefore, be dealt with under the Alabama law." Judging from this statement and from the law of Alabama, as laid down in the before mentioned case of *Louisville & N. Ry. Co. v. Williams*, one might infer that the majority of the court considers Florida a common law state. But another statement in the same paragraph leads to the opposite inference: "In the absence of averment and proof of the laws of Florida, the parties by invoking the jurisdiction of the Alabama court *submit* themselves to the laws of this state." When a cause of action arises in a foreign jurisdiction which does not have the common law, and the parties do not aver or prove the foreign law, the presumption is conclusive that the parties *submit* to the law of the forum. But in cases where the foreign state has the common law, the presumption is, not that the parties submit to be tried by the law of the forum, but that the foreign law is the same as the law of the forum. The minority opinion is very plain in expressing the view that Florida is not a common law state, which view, in the light of history, would seem to be entirely correct and is supported by many analogous cases; e. g. *Peet & Co. v. Hatcher*, 112 Ala. 514, held that the law of Louisiana would not be presumed to be the same as the law of Alabama, because Louisiana was not a

common law state. *Brown v. Wright*, 58 Ark. 20, held the same as to Texas; *Flata v. Mulhall*, 72 Mo. 522, held the same as to Texas as was held in *Brown v. Wright*. But *Simms v. Express Co.*, 38 Ga. 129, holds opposite to *Peet & Co. v. Hatcher* as to the law of Louisiana. The general rule in all the states is that the law of the forum will be applied whether statutory or common law, if the cause of action arose in a foreign state which has not the common law and the foreign law has not been averred or proved. The minority opinion states that this general rule in Alabama, at least, is limited to contract actions and cites the case of *Kennebrew v. Southern Automatic Electric-Shock Machine Co.*, 106 Ala. 377, but there seems to be no such limitation in the case cited. However, the opinion does contain the following statement: "It is almost universally held that where there is no proof of the law of another state, nor judicial knowledge of the origin of such state which would raise up a presumption that the common law prevails there, it will be presumed that the law of the forum in which the issue is being tried is the law of that state on the question under consideration." Although this statement is incorrect as to the presumption probably, yet it is sufficiently broad to include all civil actions. The dissenting justices further say that they have been unable to find where the general rule has been applied in case of torts. We cite as a clear application on this doctrine to torts, *Stevenson v. Pullman Palace Car Co.* (Tex.), 26 S. W. 112.

FEE SIMPLE ESTATE—RESTRAINTS ON ALIENATION.—Certain lands were conveyed in fee to plaintiff, a charitable corporation, with a perpetual restriction against alienation. Defendant agreed to buy part of this property, but, on discovering the attached condition, refused to perform. This action was to enforce the agreement. *Held*: that the restriction against alienation is void as contravening public policy. *Female Orphan Society v. Young Men's Christian Ass'n* (1907), — La. —, 44 So. Rep. 15.

It requires no authorities to support the universally recognized rule of the common law, prohibiting restrictions against alienation by the grantee of a fee-simple estate. But this rule has two generally accepted exceptions: (1) when such condition is imposed by a sovereign power, *Smythe v. Henry*, 41 Fed. 705; or, (2) when it is in a conveyance to charity, 6 AM. & ENG. ENC. L. 509; 6 Cyc. 926. The Louisiana Code does not directly cover the point in issue in the principal case, and although the court discusses various provisions of the Code, the decision is based mainly on the grounds of public policy. The decisions forming an exception to the general rule given above are founded upon the theory that public welfare is benefited by a relaxation of the rule in favor of conveyances to charities. See *Mills v. Davison et al.*, 54 N. J. Eq. 659. In further support of the exception in cases of conveyances to charities, see, *Perrin et al. v. Carey et al.*, 24 How. 465; *Jones v. Habersham*, 3 Woods 443; *City of Philadelphia v. Girard's Heirs*, 45 Pa. St. 9; *State of Louisiana, etc., v. Executors of McDonogh*, 8 La. Ann. 171. The facts in the principal case would seemingly form a firm basis for the operation of the second exception.